

REMARKS

Claims 1, 4, 11, 18 and 20 have been amended.

No Claims have been cancelled by this Amendment.

Claims 1-6 and 8-37 are currently pending in this application.

Claims 1, 11, 12, 14, 18, 20, 24, 25, and 29 are in independent format.

1. Communication Dates

Applicant has noted that the Office Action Summary identifies the Office Action of December 12, 2004 as being responsive to the communication filed on September 14, 2004. However, the communication filed on September 14, 2004 was a facsimile retransmission, at the request of the Examiner, of the communication originally filed on March 25, 2004, and received at the USPTO on March 29, 2004 (as indicated by stamp on return postcard). Applicant respectfully requests that the previous communication from the Applicant be credited as having been timely received by the USPTO on March 29, 2004 and not on September 14, 2004, for purposes of determining applicable patent term extension.

2. Allowable Claims

The Examiner's allowance of Claims 12-17 and 24-36 is respectfully acknowledged.

The Examiner has stated that Claim 11 is objected to because of an informality. No other objections to, or rejections of, Claim 11 are set forth in the Office Action, and it is presumed that upon correction of the informality, Claim 11 will be allowable. Accordingly, Claim 11 has been amended as set forth below.

The Examiner has stated that Claims 20-23 are objected to as being dependant upon a rejected base claim, but would be allowable if rewritten in independent form. Claim 20 has been rewritten in independent form by including all limitations of base Claim 18. Claims 21, 22, and 23 each depend from Claim 20, and are seen as allowable for the same reasons as Claim 20.

3. Claim Objections

The Examiner's objections to Claims 4 and 11 are respectfully acknowledged. Claims 4 and 11 have each been amended to overcome the specifically identified objections, and are accordingly believed to now be in proper form.

4. Rejections Under 35 U.S.C. § 103(a)

a. Claims 1, 10, 18, 19, and 37

The rejection of Claims 1, 10 18, 19, and 37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,110,126 to *Zoth et al.* in view of U.S. Patent No. 4,284,847 to *Besserman* is respectfully traversed.

Independent Claim 1, as amended, sets forth a multi-function auditory screening device which includes a signal processor housed in an enclosure. The processor is configured with a computer program operated on command by a user, to produce at least two discrete auditory tests, one of which is an auditory brainstem response test, and the other of which is selected from a group comprising otoacoustic auditory emission test procedures, tympanometry, and otoreflectance, for a test subject. Each of these tests requires no voluntary feedback from a patient, and is automated through the use of the computer program.

In contrast, the combination of the '126 *Zoth et al.* and '847 *Besserman* references fails to render obvious a multi-function auditory screening device configured with a computer program for producing at least two discrete auditory tests including an auditory brainstem response test and a test selected from a group comprising otoacoustic auditory emission test procedures, tympanometry, and otoreflectance. The '126 *Zoth et al.* reference teaches exclusively the use of an audiological screening and testing method employing statistical phase analysis of otoacoustic emissions in response to acoustic stimuli, i.e., an otoacoustic auditory emission test. The '126 *Zoth et al.* reference does not provide any other auditory testing procedures or capabilities. The '847 *Besserman* reference fails to teach the use of any automated auditory testing procedures, instead illustrating a device for conventional auditory testing which requires patient voluntary feedback by which a patient can represent that a particular tone or sound has been heard.

Accordingly, the combination of the '126 *Zoth et al.* reference and the '847 *Besserman* reference fails to render obvious the multi-function auditory screening device as set forth in Claim 1 which includes a signal processor and computer program configured to produce an auditory brainstem response test and at least one additional auditory test selected from a group comprising otoacoustic auditory emission test procedures, tympanometry, and otoreflectance. Claim 1 is therefore seen as allowable under 35 U.S.C. § 103(a) over the combination of the '126 *Zoth et al.* and '847 *Besserman* references.

Claims 10 and 37 are dependent upon Claim 1, and accordingly are seen as allowable under 35 U.S.C. § 103(a) over the combination of the '126 *Zoth et al.* and '847 *Besserman* references for the same reasons as Claim 1.

Independent Claim 18, as amended, sets forth a multi-function auditory screening device which includes a computer program at least partial contained in a signal processor, which is accessible by a user to operate the signal processor to perform an otoacoustic emission test and an auditory brainstem response test on a test subject.

As set forth above, the combination of the '126 *Zoth et al.* reference and the '847 *Besserman* reference fails to render obvious a multi-function auditory screening device which includes a signal processor and computer program configured to produce at least two discrete auditory tests and associated stimulus signals selected from a group comprising otoacoustic auditory emission test procedures, auditory brainstem response test procedures, tympanometry, and otoreflexance. More specifically, the cited combination does not render obvious a multi-function auditory screening device which is configured to perform both an otoacoustic emission test and an auditory brainstem response test. Claim 18 is therefore seen as allowable under 35 U.S.C. § 103(a) over the combination of the '126 *Zoth et al.* and '847 *Besserman* references.

Claim 19 is dependent upon Claim 18, and accordingly are seen as allowable under 35 U.S.C. § 103(a) over the combination of the '126 *Zoth et al.* and '847 *Besserman* references for the same reasons as Claim 18.

b. Claims 5 and 37

The rejection of Claims 5 and 37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,110,126 to *Zoth et al.* and U.S. Patent No. 4,284,847 to *Besserman* as applied to Claim 1 above, and further in view of U.S. Patent No. 5,868,682 to *Combs, et al.* is respectfully traversed.

Each of Claims 5 and 37 depends from independent Claim 1, as discussed. Accordingly each is believed allowable over U.S. Patent No. 6,110,126 to *Zoth et al.* and U.S. Patent No. 4,284,847 to *Besserman* as applied to Claim 1 above, and further in view of U.S. Patent No. 5,868,682 to *Combs, et al.* for the same reasons as independent Claim 1. The '682 *Combs et al.* reference teaches the use of an otoreflectance auditory test, and not an auditory brainstem response test in combination with any other auditory testing procedures.

c. Claim 6

The rejection of Claim 6 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,110,126 to *Zoth et al.* and U.S. Patent No. 4,284,847 to *Besserman* as applied to Claim 1 above, and further in view of U.S. Patent No. 5,197,332 to *Shennib* is respectfully traversed.

Claim 6 depends directly from independent Claim 1, and accordingly, is believed allowable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,110,126 to *Zoth et al.* and U.S. Patent No. 4,284,847 to *Besserman*, and further in view of U.S. Patent No. 5,197,332 to *Shennib* for the same reasons as independent Claim 1. The '332 *Shennib* reference teaches the use of conventional auditory testing which requires the test subject to provide voluntary feedback in response to presented audio signals, similar to

that taught by the '847 *Besserman* reference, and is not related to automated hearing testing procedures.

d. Claims 8 and 9

The rejection of Claims 8 and 9 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,110,126 to *Zoth et al.* and U.S. Patent No. 4,284,847 to *Besserman* as applied to Claim 1 above, and further in view of U.S. Patent No. 5,267,571 to *Zurek et al.* is respectfully traversed.

Each of Claims 8 and 9 depends from independent Claim 1, as discussed. Accordingly each is believed allowable over U.S. Patent No. 6,110,126 to *Zoth et al.* and U.S. Patent No. 4,284,847 to *Besserman* as applied to Claim 1 above, and further in view of U.S. Patent No. 5,267,571 to *Zurek et al.* for the same reasons as independent Claim 1. The '571 *Zurek et al.* reference teaches the same method of hearing testing as taught by the '126 *Zoth et al.* reference, i.e. otoacoustic emission testing.

5. Conclusion

Based on the foregoing, the further allowance of Claims 1-6, 8-11, 20-23, and 37 together with previously allowed Claims 12-17 and 24-36 is requested.

If for any reason the Examiner is unable to allow the application on the next Office Action and feels that an interview would be helpful to resolve any remaining issues, the Examiner is respectfully requested to contact the undersigned attorney for the purpose of arranging such an interview.

Respectfully submitted,

Mark E. Books

Mark E. Books, Reg. No. 40,918
Polster, Lieder, Woodruff & Lucchesi, L.C.
12412 Powerscourt Drive, Suite 200
St. Louis, Missouri 63131
Tel: (314) 238-2400
Fax: (314) 238-2401
mbooks@patpro.com